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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,493	03/30/2004	L. Reg Funk	64,617-013	4900
7590 Adam B. Strauss DYKEMA GOSSETT PLLC Suite 300 39577 Woodward Avenue Bloomfield Hills, MI 48304		EXAMINER WATSON, ROBERT C		
		ART UNIT 3723		PAPER NUMBER
		MAIL DATE 03/14/2008		DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/813,493

**Applicant(s)**

FUNK ET AL.

**Examiner**

Robert C. Watson

**Art Unit**

3723

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 58-75 is/are pending in the application.
- 4a) Of the above claim(s) 61, 64 and 71-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 58-60, 62-63, 65-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 58-60, 62-63, and 65-70 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The description for Figure 16, the elected species, provides inadequate antecedent support for the language used in the claims. For example, the description with regard to Figure 16 does have the terminology; "first planar body", second planar body", "planar to the upper surface of said first planar body". The claims are ambiguous as to where or not the "second planar body" is being positively claimed in the claimed combination. It is not understood what is meant by the upper surface of the restraint body being "generally planar to said upper surface of said first planar body". This relationship has not been explained in the description and no references in the drawing have been provided to show this relationship. Further, this phrase in claim 58 appears to be contradicted by claim 62 which states that planar portion extends over said first planar body rather than is planar to the first planar body. The claims are wholly ambiguous, indeterminate of scope, and entirely lack antecedent support in the description.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 58-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gano in view of Extine and Blatz et al.

Gano shows a positional restraint with an upper surface that is planar at one end and has a ramp like obstruction at the other end.

Extine teaches that positional restraints 30 may be removeably mounted on a first planar body by means of mating interfitting projections and pockets and may have a curvilinear shape as at 34.

Gano's positional restraint ramp portion may obviously have a curvilinear shape the bottom thereof may have mating interfitting projections/pockets for engagement with a first planar member in view of the teachings of Extine.

Gano's positional restraint may obviously be used in combination with other wheel engaging stackable blocks such as the planar blocks of Blatz having octagonal projections/pockets. One skilled in the art would have been motivated to do this in order to achieve a multi-tiered wheel support.

Claims 65-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gano in view of Extine and Blatz et al supra and further in view of Shih and Giorgi.

Shih and Giorgi show how blocks may have planar portions with a heel to interfit with other planar portions in a vast multitude of planar arrays. Using this broad technique one skilled in the art could obviously provide a heel in Gano and make Gano interfit with other planar blocks in any planar interfitting tiered relationship as one desires for convenience and utility. The examiner takes Official Notice that the ordinary level of skill in this art is demonstrated by children stacking Lego Blocks <sup>TM</sup>. Merely providing heels, pockets, projections, to interfit blocks is obvious and well known in the art and one skilled in the art can readily provide the necessary heels, pockets,

projections, to interfit any blocks in any planar configuration desired is obvious and children could accomplish this. The claims are no more than a combination of old elements which is not patentable under the "KSR" doctrine.

Claims 61, 64, and 71-75 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/29/05.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Watson whose telephone number is 571 272-4498. The examiner can normally be reached on Mon. - Thurs. , 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on 571 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3723

/Robert C. Watson/

Primary Examiner, Art Unit 3723

rcw